



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2008

Mr. J. Randel Hill
General Counsel
Texas State Board of Public Accountancy
333 Guadalupe, Tower III, Suite 900
Austin, Texas 78701-3900

OR2008-01902

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 302041.

The Texas State Board of Public Accountancy (the "board") received a request for file number 07-01-20L. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information consists of a completed investigation. Pursuant to section 552.022(a)(1) of the Government Code, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Sections 552.107 and 552.111 of the Government Code are discretionary exceptions that protect a governmental body's interests and may be waived. As such, they are not other law that makes information confidential for the purposes of section 552.022. *See* Open Records Decision Nos. 677 at 8 (2002) (attorney work-product privilege under section 552.111 is not other law for purposes of section 552.022), 676 at 10-11 (2002) (attorney-client privilege under section 552.107 may be waived). Therefore, this information may not be withheld on the basis of section 552.107 or 552.111. However, the Texas Supreme Court has held that the Texas Rules of Evidence and Texas Rules of

Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also* Open Records Decision Nos. 677 (2002), 676 (2002). Accordingly, we will address your attorney-client and work-product arguments under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. Further, because information subject to section 552.022(a)(1) may be withheld under section 552.101 of the Government Code, we will address your claim under this section.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. Section 901.160 of the Occupations Code provides as follows:

(a) The board shall make available at the board's offices in Austin any file maintained or information gathered or received by the board from a third party regarding a license applicant or current or former license holder for inspection by the applicant or license holder during normal business hours.

(b) A license applicant or current or former license holder may authorize the board in writing to make available for inspection by a designated person or by the public any information gathered or received by the board from a third party regarding the applicant or license holder.

(c) Except on written authorization as provided by Subsection (b), the following information gathered or received by the board is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) information regarding the qualifications of an applicant or license holder to be certified as a certified public accountant;

(2) information regarding the qualifications of an applicant or firm license holder to be issued a firm license as a certified public accountancy firm; and

(3) information regarding a disciplinary action under Subchapter K against a license holder or an applicant to take the uniform CPA examination, before a public hearing on the matter.

(d) A final order of the board relating to a disciplinary action against a license holder, including a reprimand, that results from an informal proceeding or a formal public hearing is subject to disclosure to the public and is available on request.

Occ. Code § 901.160. You assert that the submitted information was collected in the course of a disciplinary action against a license holder prior to a public hearing. Because it does not appear that the exception to confidentiality in section 901.160(b) applies, we agree that the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 901.160(c) of the Occupations Code. As our ruling is dispositive, we do not address your remaining claims.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

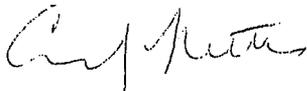
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 302041

Enc. Submitted documents

c: Mr. Jack Lagos
c/o Mr. J. Randel Hill
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(w/o enclosures)